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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 743

J. W. BOYT, ESTATE OF PAUL A. BOYT, DECEASED, BY DOROTHY F. BOYT AND ROBERT G. RILEY, ADMINISTRATORS, AND B. B. QUINER AND EVA QUINER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 175-187) are reported at 18 T. C. 1057. The opinion of the Court of Appeals (R. 212-223) is reported at 209 F. 2d 839.

JURISDICTION

The judgment of the Court of Appeals was entered on February 2, 1954. (R. 224.) A petition

for rehearing, filed on February 19, 1954 (R. 225-233), was denied on March 3, 1954 (R. 235). The petition for a writ of certiorari was filed on May 1, 1954. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the courts below erred in holding that the distributive shares of certain trusts in the income of a partnership were taxable to the grantors of the trusts under Sections 22(a), 181 and 182 of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the statute and regulations involved are set forth in the Appendix, *infra,* pp. 14-17.

STATEMENT

The facts, as found by the Tax Court (R. 67-85, 177-184), may be summarized as follows:

The Boyt Harness Company, an Iowa Corporation (hereinafter sometimes referred to as the Boyt Corporation), was organized in the latter part of 1933 and, at its place of business in Des Moines, Iowa, engaged in manufacturing harness, leather goods and kindred lines for farm use, until dissolved in 1941 as hereinafter mentioned. A predecessor corporation owned by members of the Boyt family had engaged in a similar line of business from 1901 until January 1934 when its assets were sold by a receiver to a group consisting of the individual petitioners and the decedent whose estate is

a petitioner. This group transferred such assets to the newly organized Boyt Corporation and received stock in proportion to their respective cash contributions for the purchase of the assets. (R. 177.)

The stock of the Boyt Corporation so issued in 1934 in the names of J. W. Boyt, A. J. Boyt, and Paul A. Boyt (now deceased) was held by them on behalf of themselves and their wives, each of whom had made a substantial contribution to the venture. (R. 178.)

During 1940 the Boyt Corporation did not have sufficient working capital or credit to finance large Government contracts it desired, and it endeavored to interest Glen C. Herrick to that end, but he refused. However, Herrick proposed the formation of a limited partnership between the corporation and himself to engage solely in the business of manufacturing certain types of canvas and leather military equipment. (R. 178.)

On November 4, 1940, the Boyt Corporation as the general partner and Herrick as the limited partner entered into a limited partnership agreement, under the laws of Iowa, to conduct business at Des Moines, Iowa, under the firm name of Boyt Harness Company (hereinafter referred to as the Limited Partnership) to procure contracts with and manufacture products for the United States Government. Herrick agreed to contribute $500 as special capital, to procure the bidding and performance bonds, and to advance necessary funds for financing the contracts obtained, with such ad-

vances to be evidenced by the four per cent demand notes of the Limited Partnership. The Boyt Corporation agreed to contribute certain tools, equipment, machinery, etc., and also management. It was agreed that the Limited Partnership would purchase special dies, machinery and equipment; that it would pay the Boyt Corporation the actual cost of the manufacture of products contracted for, without allowance for the use of that company's machinery, equipment and premises or for salary to that company's officers; that it would not bid on work without Herrick's approval; and that its profits from completion of any contract would be divided between the general partner and the limited partner in the amounts of two-thirds and one-third, respectively, during the first year, and thereafter three-fourths and one-fourth, respectively. It was agreed that the limited partner would not be liable for any losses in excess of his special capital contribution, and, further, that the Limited Partnership's books of account, funds, and disbursements would be maintained under the control of an employee of that partnership designated by Herrick. The agreement remained in effect until terminated in December 1944, except as modified with respect to the identity of the general partner, as hereinafter mentioned. During its existence the Limited Partnership entered into and performed numerous contracts with several branches of the Armed Forces for production of various items made from canvas, leather, and webbing. (R. 178-179.)

Entirely separate and apart from the Limited Partnership enterprises, the Boyt Corporation continued to engage in the production of certain civilian goods and maintained its own books of account and bank account, until its dissolution as of August 30, 1941. (R. 179.)

During 1941 the stockholders of Boyt Corporation considered the dissolution of the company and the formation of a general partnership. Before any definite conclusion had been reached as to whether such a step could be carried out, in view of the limited partnership agreement, J. W. Boyt, A. J. Boyt, and Paul A. Boyt caused one-half of their respective shares in the Boyt Corporation to be issued to their wives. (R. 179-180.)

During the latter part of August 1941 and on advice of counsel, Herrick raised no question as to the proposed formation of a Boyt family general partnership, provided it would assume and carry out the obligations of the Boyt Corporation. (R. 180.)

On August 30, 1941, at a special meeting attended by all the stockholders of the Boyt Corporation, it was resolved that the corporation accept an offer to purchase its assets and assume its liabilities as of the close of business on August 30, 1941, as made by a partnership composed of those stockholders. (R. 180.)

On September 15, 1941, but as of August 30, 1941, the stockholders executed written articles of partnership under the firm name of Boyt Harness Company with principal place of business at

Des Moines, Iowa (hereinafter referred to as the Boyt Partnership) providing, *inter alia,* that the partnership capital should consist of all the assets of the Boyt Corporation and should be owned by the partners in stated proportions; that the partners should share in the profits and losses of the business in those proportions; that the partnership should take over all assets and accounts of the Boyt Corporation and assume all its debts, liabilities, and uncompleted contracts as they existed on August 30, 1941; and that upon dissolution of the partnership and payments of debts, the surplus should be divided among the partners in accordance with their interests therein. The parties to the articles of partnership thereby intended in good faith to become partners for the purpose of carrying on a business to which they each contributed capital and the profits and losses of which they agreed to share in certain proportions. (R. 180-181.)

The Boyt Corporation was dissolved on August 30, 1941, and the Boyt Partnership took over its assets and assumed its liabilities as of that date. The Boyt Partnership was substituted for the dissolved corporation as the general partner in the Limited Partnership and thereafter carried out the terms of the November 4, 1940, limited partnership agreement. The Boyt Partnership was recognized as the general partner in the Limited Partnership in Government contracts obtained in the name of the Limited Partnership. J. W. Boyt had been president of the Boyt Corporation and as such had managed the affairs of Limited Partnership. He became the managing partner of the Boyt

Partnership and as such continued as manager of the Limited Partnership. The Boyt Partnership continued the production of civilian goods as an independent venture. (R. 181.)

Under date of September 14, 1942, seven of the partners in the Boyt Partnership executed seventeen declarations of trust, identical in form. In each, the grantor and (with one exception) his spouse were trustees; the grantor's child was beneficiary; and the corpus of the trust consisted of a stated percentage interest in the Boyt Partnership. (R. 182-183.) Ten of these trusts (three executed by J. W. Boyt, three by A. J. Boyt, one by Paul A. Boyt, and three by B. B. Quiner) are involved in the instant proceeding.

The trust instrument in each instance provided (R. 183) that:

> I, * * * [grantor], owner of a * * * [designated] per cent interest in the Boyt Harness Company, a partnership * * *, do hereby acknowledge and declare that as of June 1, 1942 I have established an irrevocable trust for the benefit of my minor * * * [name of son or daughter], in a * * * [designated] per cent subpartnership (with myself) interest in said partnership taken from my said * * * per cent interest therein, upon the conditions and for the uses and purposes hereinafter set forth.

The trust instrument further provided, *inter alia,* that (R. 183):

> No trustee, as such, shall participate in the management of said partnership, it being my intention hereby to establish the relation of

subpartnership between myself and said trustees * * *.

The instrument also provided that the trustees should have power to hold, accumulate, invest, sell, or exchange the trust fund and its accumulations; that the grantor directed the Boyt Partnership to segregate the interest therein transferred in trust and maintain book entries to show complete delivery thereof to the trustees; that the trustees as they deemed proper should pay portions of the income to the use of the beneficiary, but not on account of any legal obligation of his parents; that the trustee should distribute one-half of the trust fund and accumulations to the beneficiary upon his written request after attaining 25 years of age, and distribute the remainder upon his attaining 35 years of age; that if the beneficiary should predecease the grantor without issue or surviving brother or sister, then the remaining portion of the trust estate should revert to the grantor and his spouse as joint tenants with right of survivorship; and that the grantor reserved the right to purchase the subpartnership interest at any time at the value thereof as shown by the last preceding audit of the Boyt Partnership. (R. 183-184.)

Under date of June 1, 1942, the partners of the Boyt Partnership and trustees of the various trusts executed a notice of amendment to the articles of partnership setting forth the percentage share of the net income of Boyt Partnership distributable to each partner and to each of the seventeen trusts, beginning June 1, 1942. (R. 184.)

An audit was made of the books of account of the Boyt Partnership as of May 31, 1942, and based thereon accounts were set up showing the percentage interest and dollar share of the capital account of each trust. The drawing account for each trust showed the percentage of interest and the dollar share of the partnership's net income. (R. 184.)

The Commissioner, determining deficiencies, refused to recognize the trusts for tax purposes, and taxed their allocated shares of the net income of the Boyt Partnerships to the grantors.[1] The Tax Court agreed, holding that the trusts "contributed nothing to the enterprise and [that] their creation merely provided a means whereby they became passive recipients of shares of income earned by the grantor-partners. Furthermore," the Tax Court concluded, "the grantors in their individual capacities * * * retained complete dominion and control over the corpus of the trusts," and thus "actually earned the income in question" (R. 187). The Court of Appeals affirmed. (R. 213-223.)

ARGUMENT

Both courts below agreed, after appraising the details of the subpartnership-trust arrangements involved in this case, that the grantors of the trusts actually continued to earn the Boyt Partnership

[1] The Commissioner also refused to recognize the wives of J. W. Boyt, A. J. Boyt, and Paul A. Boyt, as partners, and taxed their distributive shares of the net income of Boyt Partnership to the husbands (R. 182); but the Tax Court decided this point against the Commissioner (R. 185-186). The Commissioner acquiesced in the Tax Court's decision (1953-1 Cum. Bull. 3), and he took no appeal.

income they sought to siphon through and attribute to the trusts. Resting upon amply supported findings that the grantors retained substantially complete dominion over the trust funds and that the trusts served merely as "passive recipients of shares of income earned by the grantor-partners" (R. 187), this conclusion applies well-settled principles to the facts presented here. *Lucas* v. *Earl,* 281 U. S. 111; *Burnet* v. *Leininger,* 285 U. S. 136; *Helvering* v. *Clifford,* 309 U. S. 331; *Commissioner* v. *Culbertson,* 337 U. S. 733. The result is clearly correct. Turning on the particular facts of this case, it presents no conflict and no other reason for review by this Court.

The avowed and dominant purpose of the grantors in creating trusts was to "keep [their] income this year, individually, within reasonable tax limits."[2] Cleaving to this design, the grantors remained in complete control of the property they formally assigned, and there was no significant

---

[2] The quoted language is from a letter dated May 23, 1942, written by J. A. Boyt to his lawyer (R. 111, 219-220). To quote it more fully, the letter stated:

> We are seriously considering dividing up our interests in the Partnership by giving outright part of our interests to other members of our family, as a gift, in order to keep our income this year, individually, within reasonable tax limits.
>
> For instance, the writer and his wife each have 17% of the Boyt Harness Company, and it is our intention to give part of our interest to each of our three children who are minors. We presume a trust would have to be formed to take care of the interests of the children.
>
> We understand this could be done without the recipients of such a gift having any voice in the partnership. Also, that such a procedure would stick and would not jeopardize our present partnership into being construed as an association or corporation.

change in their business relationships by virtue of the assignments. The Boyt Partnership, the income of which the taxpayers sought to subdivide into separate family shares for tax purposes, functioned without change. The trust instruments specifically provided that no trustee as such should participate in the management of the Boyt Partnership. (R. 80, 183.) With their spouses, the grantor-partners retained as trustees plenary powers over the interests they had placed in trust, and their individual roles as partners in the Boyt Partnership remained unaltered.[3] In short, after the creation of the trusts, as before, the grantors remained for all practical purposes the real owners of the interests in question; the record could have afforded no adequate basis for a contrary determination. Cf. *Feldman* v. *Commissioner,* 186 F. 2d 87 (C. A. 4th); *Schal-*

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[3] Misconceiving the issue, petitioners invoke (Pet. 18-19) *Helvering* v. *Stuart,* 317 U.S. 154, for the proposition that state law determines the legal rights and interests created by their trust instruments. The courts below nowhere questioned this proposition. They held merely that the rights and interests in the trusts were legally and economically too unsubstantial to permit their recognition as separate entities for tax purposes. Thus, the Court of Appeals said (R. 222-223):

> As we have noted, petitioners retained beneficial ownership of the trust res for all practical purposes. Conversely, the trusts contributed nothing to the Boyt Partnership enterprise. This is true notwithstanding a valid subpartnership or joint venture may have been created under the local law of Iowa. *Commissioner* v. *Tower,* 327 U. S. 280; *Lucas* v. *Earl,* 281 U. S. 111; *Helvering* v. *Clifford,* 309 U. S. 331 * * *. The declarations of trust passed nothing more than mere legal title to the trust corpus. The trusts contributed nothing more in return. This was insufficient to establish the trusts as partners, subpartners, or joint venturers in the Boyt Partnership enterprise.

lerer v. *Commissioner,* 203 F. 2d 100 (C. A. 7th), certiorari denied, 345 U. S. 995.[4]

The propriety of this conclusion, and the absence of occasion for further review, remains clear despite taxpayers' claim (Pet. 19-26) of conflict with numerous decisions of other courts of appeals. Divergences of result in family partnership cases of this type follow from the infinitely variable fact situations they present. The governing rules, if not always simple to apply, are not in controversy. And the instant case, at any rate, falls clearly within the area where empty legal formalities, transparently designed for the purpose of escaping taxes, effect no change of substance in the ownership of property or the income therefrom.

---

[4] Petitioners contend (Pet. 16-17, 28-32, 35-40) that the case should have been remanded for a finding whether there was a *bona fide* joint venture. The short answer to this contention is that the findings of the Tax Court, approved by the Court of Appeals,—that the grantors retained substantial ownership of the interests they had assigned and continued to control their partnership and earn its income as before—clearly and necessarily negate the existence of any genuine subpartnership or joint venture with the trusts.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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L. W. POST,
Special Assistants to the Attorney General.

MAY 1954.

APPENDIX

Internal Revenue Code:

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(26 U. S. C. 1946 ed., Sec. 22.)

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

(26 U. S. C. 1946 ed., Sec. 181.)

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the part-

nership, computed as provided in section 183(b).

(26 U. S. C. 1946 ed., Sec. 182.)

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.*—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, company, or corporation.

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

* * * * *

(26 U. S. C. 1946 ed., Sec. 3797.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.22(a)-1. *What Included in Gross Income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, divi-

dends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22(b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets. * * * Income may be in the form of cash or of property.

* * * * *

SEC. 29.181-1. *Partnerships.*—Partnerships as such are not subject to the income tax imposed by chapter 1, but are required to make returns of income. (See sections 187 and 188.) For definition of what the term "partnership" includes, see section 3797(a)(2).

SEC. 29.182-1. *Distributive Share of Partners.*—(a) Each partner is required to include in his return for his taxable year within which or with which the taxable year of the partnerships ends, whether or not distributed:

* * * * *

(3) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183(b).

* * * * *

SEC. 29.3797-4. *Partnerships.*—The Internal Revenue Code provides its own concept of a partnership. Under the term "partnership" it includes not only a partnership as

known at common law, but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation, or venture, and which is not, within the meaning of the Code, a trust, estate, or a corporation. * * *

* * * * *

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